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THE STATE OF JHARKHAND V. SHAILENDRA KUMAR RAI @ PANDAV RAI, [2022 SCC OnLine SC 1494]

Amandeep Kaur[1]

Index of Authorities

1. Bhagirath v. State of Haryana, (1997) 1 SCC 481.
2. Karnataka v. Shariff, (2003) 2 SCC 473.
3. Khushal Rao v. State of Bombay, AIR 1958 SC 22.
4. Moti Singh v. State of Uttar Pradesh, AIR 1964 SC 900.
5. State of Uttar Pradesh v. Ram Sagar Yadav, (1985) 1 SCC 552.
6. The State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai, 2022 SCC OnLine SC 1494.

Abstract

This case relates to two most heinous crimes, the first is rape and the other is murder. The victim in this case was raped and burnt by pouring kerosene on her body. She died almost after one month of this incident when she was in hospital. Here, in this case the admissibility of her dying declaration was challenged on the ground that it was recorded by a police officer and there was no sufficient evidence for corroboration of her dying declaration. The other important issue involved in this case was the "two-finger test". The doctors conducted the "two-finger test" of the victim and made remarks about her sexual history. This test has been declared as encroaching women's right to privacy by the Courts through various judgments. But it is harsh reality that this test is still conducted at various instances. Now, we will look at the various facets of this case by analysing the judgment of the Apex Court.

Primary Details of the Case

General Details

[1] Student at UILS, Panjab University, Chandigarh.

Court Name: Supreme Court of India

Case Number: Criminal Appeal No. 1441 of 2022

Judgment date: 31 October, 2022

Appellant: The State of Jharkhand

Respondent: Shailendra Kumar Rai @ Pandav Rai

Bench: Justice DY Chandrachud, Justice Hima Kohli

Specific Details

Prosecution Witnesses:

1. Parvati Devi, PW 1
2. Bibhuti Bushan Ray, PW 2
3. Mritunjay Ray, PW 3
4. Sanjay Kumar, PW 4
5. Sunil Kumar Roy, PW 5
6. Dr. RK Pandey, PW 6
7. Rekha Dasgupta, PW 7
8. Dr. R Mahto, PW 8
9. Dr. Minu Mukherjee, PW 9
10. Bal Krishna Ray, PW 10
11. Lallan Prasad, PW 11
12. Suresh Yadav, PW 12

Defence Witnesses:

1. Dhirendra Rai, DW 1
2. Dasrath Tiwary, DW 2
3. Balmukund Rai, DW 3

Brief Facts of the Case

In this case, the story narrated by the victim was that the respondent entered her house on November 7th, 2004. He committed rape upon her and threatened to kill her if she made any sound. After committing rape, he burnt her by pouring kerosene on her and fled away from there. After hearing her cries for help, her family members and a resident of village came to her room and took her to the Hospital. The station in charge of the police station recorded the statement of the victim at the hospital on the same day and after that the victim died on December 14th, 2004.

The Sessions Court convicted the respondent of offences punishable under *Sections 302, 341, 376 and 448* of the IPC on the basis of the dying declaration. The reasoning for the judgment of the Sessions Court was as under:

a. Dr. RK Pandey, a Medical Officer certified that the deceased was mentally and physically fit to make the statement and stated that the statement was recorded in his presence.
b. The Court held that turning hostile of the family members of the victim cannot be considered fatal to the case of the prosecution.
c. The dying declaration recorded by a Police Officer is admissible in law.
d. The only fact by the doctor that the deceased was in agony at the time of recording of dying declaration doesn't mean that she was not mentally fit to make the statement.
e. Although no signs of rape were found on the body of the deceased but the opinion of the Medical Officers will not discredit the witnesses of fact.

The respondent preferred an appeal before the High Court. The High Court set aside the judgment of the Sessions Court and acquitted the respondent, for the following reasons:

a. The family members of the victim had turned hostile.
b. Dr. RK Pandey contradicted his own statement that the statement was recorded in his presence by stating that he was in adjacent room with another patient when, the statement of the victim was recorded.

c. There was no sign of sexual intercourse when the victim was examined. The Court relied on the decision in *Moti Singh v. State of Uttar Pradesh*[2] and the dying declaration was held inadmissible.
d. The family members of the deceased ignored the advice of a doctor to shift the deceased to another hospital for better treatment.

After this, the appellant invoked the jurisdiction the Supreme Court under *Article 136* of the Constitution of the India and challenged the decision of the High Court.

Issues raised in the Case

The issues that were involved in the present case were:

a. Whether the statement of the deceased is relevant under *Section 32(1)* of the Indian Evidence Act, 1872; and
b. Whether the prosecution has proved the charges against the respondent beyond reasonable doubt.[3]

Arguments Advanced by the Parties

Appellant

It was submitted on behalf of the appellants that the High Court of Jharkhand had not appreciated the evidence correctly as it was stated that Dr. RK Pandey was attending to a patient on the table adjacent to the deceased, and not to a patient in a room adjacent to the one in which the deceased was present which the High Court had misunderstood and the post-mortem examination of the deceased was conducted within 12 hours of the time of death and the report concluded that the cause of death was septicaemia due to the burn injuries sustained by her.

Respondent

The submissions urged on behalf of the appellant had been opposed by the respondent, whose counsel made the following submissions that although the dying declaration indicated that the respondent had raped the deceased, the Medical Board's

[2] AIR 1964 SC 900.

[3] *The State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai*, 2022 SCC OnLine SC 1494.

report stated that no definite opinion could be given in this regard and there was no evidence other than the dying declaration to show that the respondent raped the deceased and that the victim died around a month after the occurrence of the incident complained of. Therefore, the statement made by the deceased to the IO was not a dying declaration.

Judgement

Ratio Decidendi

The Supreme Court set aside the judgment of the High Court and the judgment of the Sessions Court was restored. The respondent was convicted under *Sections 302, 341, 376 and 448* of the IPC. The respondent was to undergo rigorous imprisonment for life for the offence punishable under *Section 302* of the IPC and rigorous imprisonment for 10 years for the offence punishable under *Section 376* of the IPC. These sentences were to run concurrently.

According to the submissions made by both the sides various observations were made by the court:

a. Whether the statement of the deceased is relevant under *Section 32(1)* of the Indian Evidence Act, 1872?

The Post Mortem Report of the deceased stated that the cause of death was the burn injuries. But there was a contention that an unnamed doctor referred the victim to another hospital where the death of the victim could have been prevented, but it was ignored by the family of the victim. The opinion of an unnamed doctor was given indirectly by another doctor. This statement was held inadmissible under *Section 60* of the Indian Evidence Act which provides that the oral evidence must be direct and it was treated as a hearsay.

The High Court referred to the case of *Moti Singh v. State of Uttar Pradesh*[4], in which there was no other evidence as to the cause of the death. But in the present case, the statement of the victim was relevant as to the cause of her death and circumstances

[4] Supra note 1 at 2.

which resulted in her death. Also, the medical evidence also stated that death was due to the burns. The dying declaration can't be rejected placing emphasis on above case.

Section 32(1) of the Indian Evidence Act provides that the dying declaration becomes relevant when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. The statement of the deceased satisfies both of the above conditions.

The dying declaration was recorded by a Police officer rather than a magistrate. The Court here referred to the cases of State of *Karnataka v. Shariff*[5]*; Bhagirath v. State of Haryana*[6] that there is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate. By referring to *Khushal Rao v. State of Bombay,*[7]the Court emphasized that there is no rule that a dying declaration alone cannot be the basis of conviction unless it is corroborated by other evidence.

The only fact that the dying declaration was not in the form of questions and answers doesn't affect its probative value because it is not possible in every case to record it in the form of questions and answers. Also, the doctor was wrongly examined before the High Court that he was in the adjacent room when dying declaration was recorded but he stated correctly before Apex Court that he was present on adjacent table when statement was made and the deceased was fit to make the statement.

For all these reasons, the statement of the victim is admissible as a dying declaration.

b. Whether the prosecution has proved the charges against the respondent beyond reasonable doubt?

The dying declaration of the deceased proves that she was raped and set on fire by the respondent. There was no evidence to give even a reasonable doubt to the guilt of the accused. Although the medical evidences couldn't find any signs of rape but the lack of medical evidence doesn't mean that the rape wasn't committed. The dying declaration clearly states that rape was committed. In *State of Uttar Pradesh v. Ram*

[5] (2003) 2 SCC 473.
[6] (1997) 1 SCC 481.
[7] AIR 1958 SC 22.

Sagar Yadav,[8] the Court held that there is neither a rule of law nor a rule of prudence that a dying declaration cannot be acted upon unless it is corroborated.

The parents of the victim turned hostile in this case and it is not fatal to the case of the prosecution as it can be possible because of various reasons such as the shame for family, threats from the respondent side, the culture of compromise, etc. The point that allegations could have been false is rejected as there was no proven enmity between deceased and the respondent.

Thus, the prosecution was able to prove their case Beyond Reasonable Doubt.

Obiter Dictum

In this case, the Court made some parting remarks about the "two-finger test" conducted by the Medical Board on the deceased. The court condemned such practices and considered it a shame if such practices are there in society even today. This test is non-scientific, re-traumatizes the victim and is even considered by various social researchers as re-rape of the victim. This test has been declared as encroaching women's right to privacy by the Courts through various judgments. *Section 53A* of the Indian Evidence Act, which was inserted by the Criminal Law (Amendment) Act, 2013, provides that evidence of a victim's sexual history is immaterial in prosecutions of sexual offences. The Court issued guidelines to the Ministry of Health and Family Welfare in this regard and stated that anyone who conducts the "two-finger test" shall be guilty of misconduct.

Commentary

The judgment was delivered by the division bench of Justice DY Chandrachud and Justice Hima Kohli who were satisfied that the statement of the victim is admissible as a dying declaration and there was no need of any medical evidence to corroborate it as it was not otherwise suspicious. The respondents were unable to create a doubt as to the story of the prosecution and the case of the prosecution was established Beyond Reasonable Doubt.

[8] (1985) 1 SCC 552.

Section 32(1) of the Indian Evidence Act, 1872 deals with the concept of dying declaration about which three issues were discussed, *first* although a dying declaration is ideally recorded by a magistrate but the dying declaration recorded by a police officer cannot be declared inadmissible. *Second* the fact that dying declaration was not in the form of questions and answers doesn't affect its probative value. *Third* the corroboration of dying declaration is not mandatory when it is not otherwise suspicious.

Section 60 of the Indian Evidence Act, 1872 states that the oral evidence must be direct. Here, the statement of an unnamed doctor who was not called as a witness was given by another doctor. It was declared inadmissible and was treated as a hearsay.

Section 375 of the Indian Penal Code, 1860 deals with the concept of rape. The court stated that whether a woman is "habituated to sexual intercourse" or "habitual to sexual intercourse" is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case.

This case is clearly a big example where the Apex Court prevented the injustice that could have been done to the victim. The Court allowed the appeal and provided justice to the deceased who was raped and set on fire by the respondent. The guidelines about the sexiest "two-finger test" were remarkable and they banned one of the cruellest evil of the society. The Court also directed the governments to review the curriculum in medical schools with a view to ensuring that the "two-finger test" is not prescribed as one of the procedures to be adopted while examining survivors of sexual assault and rape. This is the best step to provide guidance from the ground level about such evils. Thus, this case is a benchmark in the Indian legal history.

References

1. "The State of Jharkhand vs Shailendra Kumar Rai @ Pandav Rai on 31 October, 2022" available at http://indiankanoon.org/, (last visited on 12th July, 2023).
2. "Case Analysis: The State of Jharkhand vs Shailendra Kumar Rai", available at https://www.juscorpus.com/, (last visited on 12th July, 2023).
3. The Indian Evidence Act, 1872 (Act 1 of 1872).
4. The Indian Penal Code, 1860 (Act 45 of 1860).